

APPEAL NO. 022869  
FILED DECEMBER 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 9, 2002. The hearing officer determined that appellant (claimant) did not sustain a brain stem injury as a result of her \_\_\_\_\_, compensable injury. Claimant appealed, asserting that she presented credible medical evidence to support her position. Respondent (self-insured) responded, urging affirmance.

DECISION

We affirm.

It is undisputed that claimant sustained a compensable injury on \_\_\_\_\_, when she received an electrical shock while plugging in a heater in her office. At issue in this case is whether claimant sustained a brain stem injury as a result of the shock. Claimant testified as to the symptoms she began to experience after the accident. She presented medical records from Dr. S, which offered the opinion that claimant did in fact suffer a brain stem injury. Claimant also presented a letter from her primary care physician in which he concurred with the diagnosis of Dr. S. Dr. S testified at the hearing and conceded that there are a number of possible causes unrelated to the compensable injury which could have caused the claimant's complained-of symptoms. Dr. S conceded that he based his diagnosis on physical examination and not on any diagnostic testing. Self-insured presented a peer review report offering the opinion that there is no validity to the theory that claimant suffered a brain stem injury as a result of the electrical shock.

The hearing officer did not err in reaching the complained-of determination. Where the matter of the causation of the claimed injury is beyond common knowledge or experience, expert evidence to a reasonable degree of medical probability is required. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has a condition, but disbelieve that it is work-related as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). In view of the conflicting medical evidence in the record, the hearing officer could determine that claimant did not sustain a brain stem injury on \_\_\_\_\_.

Claimant contends that the hearing officer erred in that her "opinion as to scientific reliability fails because she did not consider the *Havner* factors," citing Merrill Dow Pharmaceuticals, Inc. v. Havner, 953 S.W.2d 706 (Tex. 1997). See generally Texas Workers' Compensation Commission Appeal No. 000623, decided May 11, 2000. The hearing officer did admit claimant's medical reports, although the hearing officer

stated that the expert medical opinions must be evaluated pursuant to the standard set forth in Havner. However, the hearing officer did not state that claimant's evidence was unreliable and instead noted that Dr. S stated that it was unlikely that an electrical shock of the nature claimant received would result in the type of injury diagnosed. The hearing officer then determined that it did not appear to be within medical probability that the compensable injury made the basis of this case would have extended to or included a brain stem injury. Rather than excluding or discounting claimant's evidence as being inherently unreliable, it appears that the hearing officer noted that claimant's experts were less than confident that the compensable injury actually caused the conditions, and so discounted them for that reason. We perceive no error.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

CA  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge